

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: Eric and Amy McCrann)	In Proceedings Under Chapter 13
)	
)	Case No. 07-15671
)	
Debtors)	Judge Pat E. Morgenstern-Clarren
)	

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Eric and Amy McCrann's Brief in Support of Opposition
to the Trustee's Objection to Plan Confirmation

Eric and Amy McCrann, by and through undersigned counsel, hereby submits this Brief in Support of Opposition to the Trustee's Objection to Plan Confirmation.

I. **STATEMENT OF FACTS**

On July 28, 2007, Eric and Amy McCrann ("McCranns") filed a voluntary petition seeking relief under Chapter 13 of the United States Bankruptcy Code.

In accordance with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the McCranns completed Form B22 and included mortgage payments for property they intend to surrender. In addition, the McCranns included payments on a Ford Mustang, which they also intend to surrender.

The Trustee specifically objects to plan confirmation as follows:

DISPOSABLE INCOME/COMMITMENT PERIOD: The Trustee either does not believe or cannot determine if the Debtor(s) is/are devoting all of his/her/their projected disposable income in the applicable commitment period to the plan. Specifically, the Debtors have included deductions on form B22C for ongoing payments on debts secured by property which the Debtors have already abandoned (real estate located at 47 Edgewood Drive, Grafton, Ohio) and/or are intending to surrender (a 1992 Ford Mustang).

The crux of the issue is whether the McCranns should receive the benefit of an expense allowance on collateral that they intend to surrender under 11 U.S.C. § 707(b)(2)(A)(iii). The McCranns respectfully assert that they are entitled to these allowances.

II. LAW AND ARGUMENT

This Court maintains jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and under this District's General Order No. 84. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

Several courts in the Sixth Circuit have concluded that debtors are entitled to the expense allowance on collateral that the debtors intend to surrender. *See In re Hoerlein*, 2007 Bankr. Lexis 1043, *3 (Bankr. S.D. Ohio 2007) (collecting cases which hold debtors are entitled to the expense allowance on collateral the debtors intend to surrender). *See also, In re Augenstein*, No. 06-13867 (Bankr. N.D. Ohio) (Morgenstern-Clarren, J.) (following the reasoning of several cases in the Sixth Circuit which all hold that a debtor is entitled to the expense allowance on collateral the debtor intends to surrender).

In this matter, the McCranns included on Form B22C mortgage payments for collateral they intend to surrender. In addition, the McCranns included payments on a Ford Mustang, which they also intend to surrender. The case law in this District, as well as in the majority of courts, is clear that debtors are entitled to such allowances. As such, the McCranns respectfully request that this Honorable Court overrule the Trustee's Objection as it relates to these expense allowances on Form B22C.

III. CONCLUSION

Based upon the foregoing analysis, Eric and Amy McCrann respectfully request that this Honorable Court overrule the Trustee's Objection and allow their Chapter 13 Plan to be confirmed.

Respectfully submitted,

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Certificate of Service

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

- Susan M Gray ecf@smgraylaw.com, smgray@sbcglobal.net
- Craig H Shopneck ch13shopneck@ch13cleve.com
- United States Trustee
- Others on the ECF for this case

No service by regular United States Mail

/s/Susan M. Gray _____
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